IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.84 OF 2007

WITH

CIVIL APPLICATION NO.121 OF 2007

Shri Deoram Hari Patil ...Appellant

Versus

Shri Rakesh Rajendra Kumar Agarwal ...Respondent

.....

Mr.Sandesh D.Patil for Appellant.

None for Respondent.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 26, 2007.

P.C.

1. Heard Counsel for the Appellant.

2. I see no infirmity in the view taken by the Court below while granting interim protection to the Plaintiff during the pendency of the Suit. The Trial Court has rightly noted in Para 7 that the claim of the Defendant having remained unsubstantiated, cannot be accepted.

3. Counsel for the Appellant would however contend that the Appellant having given specific details about the transaction with third party, the same was sufficient and the Trial Court ought to have taken the same into account while considering the issue of prima-facie case.

4. It is not possible to countenance this submission. If the party asserts particular position of fact, it is necessary to substantiate that fact, only when the Court would answer the issue in favour of that party. The argument that the Plaintiff himself in Paragraph 5 of the Plaint has acknowledged the transaction entered by the Defendant with the third party, is also ill-advised. The averments in Para 5 of the Plaint nowhere indicate that the Plaintiff admits the factum of transaction with the Defendant. All that has been mentioned is that the Plaintiff has come across newspaper advertisement on 21st January 2006 notifying that the Defendant was inclined to dispose of the property in favour of the third

party. That does not mean that the Plaintiff has admitted the claim of the Defendant. Thus understood, the Defendant ought to have substantiated his case that he has already handed over possession of the disputed property to third party on 18th February 2006.

5. The next argument canvassed on behalf of the Appellant is that the agreement obligates the Plaintiff to pay specified amount in certain eventuality, which obligation has not been discharged. That aspect will have to be considered at the trial. For the time being, the Plaintiff has established that he has already paid part consideration towards the disputed property. That was sufficient to protect the interest of the Plaintiff during the pendency of the Suit in the fact situation of the present case as has been rightly noted by the Trial Court. Hence, dismissed.

A.M.KHANWILKAR, J.